Item no. 08

IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice T.S. Sivagnanam

And

The Hon'ble Justice Hiranmay Bhattacharyya

MAT 1180 of 2022
with
IA No. CAN 1 of 2022

Bimal Kumar Saraf
vs.
Union of India Ors.

Appearance:

For the Appellant	:	Mr. Vinay Kr. Shraff Ms. Priya Sarah Paul Mr. Kaushal Agarwal
For the Respondents No. 2 and 4	:	Mr. Vipul Kundalia Mr. Abhradip Maity
For respondent No. 7	:	Mr. K. K. Maiti Mr. Tapan Bhanja
For State	:	Mr. A. Ray, Learned G.P. Mr. T.M. Siddiqui, Learned A.G.P. Mr. Debasish Ghosh
For the U.O.I.	:	Mr. Dhiraj Trivedi Mr. Siddhartha Lahiri
Heard on	:	02.08.2022
Judgment on	:	02.08.2022

<u>T.S. Sivagnanam J.</u>:

Affidavit of service filed in court today is kept with the record.

This intra-Court appeal is directed against an order dated 22.07.2022 passed in CAN 2 of 2022 filed in WPA 10335 of 2021 by which the learned Single Judge has directed the application being CAN 2 of 2022 to be heard alongwith the main writ petition.

We are informed that the affidavits have already been exchanged and the writ petition will be heard by the learned Single Judge.

Learned counsel for the appellant would submit that two authorities have issued show cause notices on the same grounds which are not tenable in law though he would admit that the appellant assessee has submitted his reply to both the show cause notices. The other legal issue raised by him is that the tax is recoverable from the supplier of the appellant who has been declared insolvent under the provisions of the Insolvency and Bankruptcy Code, 2016 and the said amount cannot be sought to be recovered from the appellant. We find that however larger relief has been sought for in the writ petition where the appellant has prayed for a writ in the nature of declaration. Therefore, we are of the considered view that the learned Single Judge was fully justified in directing CAN 2 of 2022 to be heard alongwith the main writ petition.

Learned counsel for the revenue would submit that two show cause notices have not been issued but the show cause notice has been issued by the Audit Department to which the appellant has responded. Be that as it may, now that the show cause notices have been issued and the appellant has submitted his reply, it would not be proper to interdict the proceedings at this stage of the matter.

Hence, we direct the appellant to fully cooperate in the adjudication proceedings by submitting his reply and relevant documents in support of his claim and the appellant shall be heard in person or through his authorized representative and thereafter the adjudicating authority/Audit Authority shall conclude the proceedings and pass a reasoned order but such order shall not be enforced and shall be retained in a sealed cover awaiting further directions in the writ petition.

Since we have not interfered with the order passed in CAN 2 of 2022 dated 22.07.2022, the said application shall be deemed to be pending before the learned Single Judge and liberty is granted to the respondent authorities to file their affidavit-in-opposition, if they deem it appropriate, within three weeks from the date of receipt of the server copy of this order and reply, if any, be filed within a week thereafter.

In view of the above, the instant appeal stands **disposed of**. Consequently, the connected application also stands disposed of.

(T. S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)

RP/Amitava (AR. CT.)